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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARNOLD JEFFERY DAKS, DAVID BRUCE
KUMHYR, ERIK ANTHONY SHELTON, and JACOB
ZACHARIAH

Appeal 2009-007621
Application 09/966,004
Technology Center 2100

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-14, 22-27, and 31-41. Claims 15-21 and 28-30 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the present invention relates to distributed programming for computer software product development and particularly to the monitoring of the progress of product development distributed between a plurality of development lines in the development of complex computer software products (Spec. 1, ll. 16-21).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and reproduced below:

1. A computer controlled display system for tracking the development of software products having a plurality of developmental lines comprising:

means for setting in each of said plurality of developmental lines, a sequence of checkpoints;

means for tracking each of said developmental lines to determine the reached checkpoints; and

means for simultaneously displaying said plurality of developmental lines and indicating said reached checkpoints.

C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Song	US 5,949,999	Sep. 07, 1999
Hopwood	US 6,223, 343 B1	Apr. 24, 2001

Pyron, Using Microsoft® Project 98 Special Edition 18-19, 125-126, 140, 154-156, 311-312, 473, 484-489, 565, 566, 661 and 662 (Que Corp. 1997) (hereinafter “Project”).

Claims 1-6, 8-13, 22-27, 32-37, and 39-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Project and Song.

Claims 7, 14, 31, and 38 stand rejected under 35 U.S .C. § 103(a) as being unpatentable over the combined teachings of Project, Song, and Hopwood².

II. ISSUE

Has the Examiner erred in concluding that the combined teachings of Project and Song would have suggested “setting in each of said plurality of development lines, a sequence of checkpoints” and “simultaneously displaying said plurality of developmental lines and indicating said reached checkpoints” (claim 1) as Appellants contend?

² The rejection of claims 32-41 under 35 U.S.C. § 112, second paragraph, has been withdrawn by the Examiner (Ans. 3).

III. FINDINGS OF FACT

Project

1. Project discloses use of Microsoft Project to schedule projects by using it to plan and track projects that involve many planners and many resources who do the work of the project (p. 565).
2. The project has levels representing the major phases and subphases, and the tasks are linked as needed to indicate which tasks must be completed before others are started (p.566), wherein the tracking of the project is displayed as a plurality of task bars with resources assigned thereto (Fig. 18.1).
3. A project management view, the Gantt Chart, comprises a Task Sheet on the left side of the display and a bar chart of the right, wherein the chart is a list of tasks displayed as bars overlaying a timescale with the length of the bars being determined by the duration of the tasks while the placement of the bars on the timescale being determined by the start and finish dates of the tasks (p. 661, Fig. 20.2).
4. Milestone tasks are created at points to monitor the project (p. 140), wherein the milestone tasks are displayed in the Gantt Chart view (Fig. 5.14).

Song

5. Song discloses the tracking of software development documents and their relationships (Abstract), wherein developmental functions such as “System Function,” “Measurement,” “Imaging” and “Filming” are tracked and displayed (Figs. 2-3).

6. Procedures and documents that are required during the project execution are defined (col. 3, ll. 57-58).

IV. ANALYSIS

In this Decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Appeal Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claims 1-6, 8-13, 22-27, 32-37, and 39-41

Appellants do not provide separate arguments with respect to claims 1-6, 8-13, 22-27, 32-37, and 39-41. Accordingly, we select claim 1 as being representative of the claims.

Appellants admit that “[t]he Project text does provide a user with software tools for the management of business or manufacturing projects including scheduling, assignment of tasks, allocating resources, and even bench marking which for the purpose of this discussion will be considered as check pointing” (App. Br. 19). In fact, Appellants admit that “there are probably enough tools and routines disclosed in the cited over 600 page Project text through the use of which the system of the invention could be built” (*id.*). Appellants then contend that “the cited Project text does not provide one skilled in the art with the specific guidance necessary to combine the diverse tools and routines in Project to develop Applicants’ claimed invention” (*id.*). In particular, Appellants contend that the cited portions of Project “fail to disclose the ... elements in claim 1 ... related to the simultaneous display of sequence of checkpoints in a plurality of developmental lines” (App. Br. 19-20) and that “the suggestion [in Project]

is too vague and unspecific to lead one skilled in the art to the setting up and simultaneous displaying a sequence of checkpoints in each of a plurality of developmental lines” (App. Br. 20).

Appellants further contend that “Song does not appear to be concerned with a collective or simultaneous display of a plurality of developmental lines each with indicated reached checkpoints” (*id.*). Though Appellants admit that Song discloses “some very general statement about defining procedures and documents required during the project execution” and “involves a very general description of a progress panel showing the status of documentation of the individual functions required to be documented at each of several stages in the development of a single component” (App. Br. 21), Appellants contend that “such a vague and general statement does not suggest the claimed element” and that “the Examiner has picked and chosen and combined elements from Project and Song not in the light of teachings from these references but in the light of Applicants’ own teaching” (*id.*).

However, the Examiner points out that “the elements of the *Project* reference relied upon were not combined based on applicant’s own teachings through impermissible hindsight as application alleges ... but were instead already combined (by Microsoft Corporation) prior to applicant’s filing date” (Ans. 11). In particular, the Examiner points out that “[A]ppellants’ admission that, ‘there are probably enough tools and routines disclosed in the cited over 600 page Project text through the use of which the system of the invention could be built’ ... is itself an apparent concession that the claimed invention would have been obvious in view of the Microsoft Project 98 software product described in the *Project* reference” (*id.*).

The Examiner finds that “*Project* discloses entering and displaying milestones” wherein “these milestones mark the completion of particular tasks included in a project and thus, serve a[s] check points in developmental lines” (Ans. 11). Further, the Examiner finds that *Project* discloses that “it has been known to break up large projects into separate phases of functional groups, which form tasks that are individually managed as part of overall project management” (*id.*) wherein “[t]hese separate tasks and associated resources may be considered developmental lines” (Ans. 11-12). Thus, the Examiner finds that “*Project* further describes simultaneous display of multiple tasks in the Gantt chart and displaying multiple milestones” (Ans. 12).

The Examiner then finds that “[t]he cited teachings of SONG et al. are largely cumulative to the evidence contained in *Project*” wherein “SONG et al. teaches the simultaneous display of multiple developmental lines” and “each column in the progress status panel of Figure 3 shows the status of the document within one development phase” (*id.*).

Appellants’ contention that “the cited *Project* text does not provide one skilled in the art with the specific guidance necessary to combine the diverse tools and routines in *Project* to develop Applicants’ claimed invention” (App. Br. 19) is not commensurate in scope with the specific recited language of representative claim 1. In particular, claim 1 does not recite any such “specific guidance.”

Further, by contending that that the cited portions of *Project* “fail to disclose the ... elements in claim 1 ... related to the simultaneous display of sequence of checkpoints in a plurality of developmental lines” (App. Br. 19-20, emphasis added) and that “Song does not appear to be concerned with a

collective or simultaneous display of a plurality of developmental lines each with indicated reached checkpoints” (App. Br. 20), Appellants are arguing that individually, neither Project nor Song anticipates the features of representative claim 1. However, the Examiner rejects claim 1 over the combined teachings of Project and Song and what the combined teachings would have suggested to one of ordinary skill in the art. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Project discloses tracking projects and displaying the tracking of the projects and associated resources with a plurality of task bars overlaying a timescale (FF 1-3), wherein milestones are created and displayed at points on the timescale to monitor the project (FF 4). We find Project to comprise a plurality of developmental lines of a project and find the milestones to comprise checkpoints reached. Thus, we conclude that Project at least suggests a system for tracking a project development having a plurality of developmental lines, setting checkpoints in each of the plurality of development lines, tracking each of the developmental lines to determine the reached checkpoints, and simultaneously displaying the plurality of developmental lines and indicating the reached checkpoints. In fact, even Appellants admit that Project “does provide a user with software tools for the management of business or manufacturing projects ..., and even bench marking which for the purpose of this discussion will be considered as check pointing” and that “there are probably enough tools and routines disclosed ... through the use of which the system of the invention could be built” (App. Br. 19).

We agree with the Examiner that “[A]ppellants’ admission ... is itself an apparent concession that the claimed invention would have been obvious in view of the Microsoft Project 98 software product described in the *Project* reference” (Ans. 11). That is, we find no error with the Examiner’s conclusion that, in view of Appellants’ admission that all claimed limitations are taught by Project, one of ordinary skill in the art would have found it obvious to apply the claimed limitations.

Furthermore, Song discloses the tracking of software development documents wherein developmental functions are tracked and displayed (FF 5) and required procedures and documents are defined (FF 6). We find no error in the Examiner’s finding of Song’s developmental functions to comprise developmental lines, wherein the procedure and document requirements comprise required checkpoints of the developmental functions (Ans. 12). Thus, we find no error in the Examiner’s finding that “[t]he cited teachings of SONG et al. are largely cumulative to the evidence contained in Project” (*id.*).

Accordingly, we agree with the Examiner’s conclusion that the combined teachings of Project and Song would have suggested “setting in each of said plurality of development lines, a sequence of checkpoints” and “simultaneously displaying said plurality of development lines and indicating said reached checkpoints” as required by claim 1.

Though Appellants contend that “the Examiner has picked and chosen and combined elements from Project and Song not in the light of teachings from these references but in the light of Applicants’ own teaching” (App. Br. 21), we find that each of the references relied on by the Examiner is directed to the same *general* field of endeavor as the invention on appeal, i.e.,

tracking and displaying project development. The Supreme Court has determined that the conclusion of obviousness can be based on the interrelated teachings of multiple patents and the background knowledge possessed by a person having ordinary skill in the art and that an obviousness “analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. 398, 418 (2007). See also *Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006).

While we are fully aware that hindsight bias often plagues determinations of obviousness, *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966), we are also mindful that the Supreme Court has clearly stated that the “combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results,” *KSR*, 550 U.S. at 401. This reasoning is applicable here.

Thus, we find unavailing Appellants’ contention that the Examiner has relied on impermissible hindsight reconstruction (App. Br. 21). That is, we conclude that one of ordinary skill in the art would have found it obvious to combine Project’s teaching of tracking and displaying of project development with Song’s teaching of tracking and displaying software development. Such combination is no more than a simple arrangement of old elements, with each performing the same function it had been known to perform, yielding no more than one would expect from such an arrangement. *KSR*, 550 U.S. at 406. The skilled artisan would “be able to fit the teachings

of multiple patents together like pieces of a puzzle” since the skilled artisan is “a person of ordinary creativity, not an automaton.” *Id.* at 420-21.

We note that Appellants have not rebutted the Examiner’s legal conclusion of obviousness by showing that the claimed combination of familiar elements produces any new function. That is, Appellants have not provided any factual evidence of secondary considerations, such as unexpected or unpredictable results, commercial success, or long felt but unmet need. In particular, Appellants have presented no evidence that replacing Song’s tracking and displaying of the development of software products for Project’s tracking and displaying of project development was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418-19).

Accordingly, for the above reasons, we affirm the rejection of representative claim 1, independent claims 8, 22, 25, 32, and 39 falling therewith, and claims 2-6, 9-13, 23, 24, 26, 27, 33-37, 40, and 41 depending respectively therefrom, under 35 U.S.C. § 103(a), as being unpatentable over the combined teachings of Project and Song.

Claims 7, 14, 31, and 38

Though Appellants contend that “there appears to be no suggestion that the tracked data [in Hopwood] is stored in associated with this display” (App. Br. 23), the Examiner finds that Project describes “providing remote tracking and communication to the project manager” and that Hopwood “is cited as additionally teaching a data tracking and management system” (Ans. 13). Since claims 7, 14, 31, and 38 are rejected under 35 U.S.C. § 103(a)

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over the *combined* teachings of Project, Song and Hopwood and what the *combined* teachings would have suggested to one of ordinary skill in the art, Appellants' singular attack on Hopwood is unpersuasive. Thus, Appellants have not shown the Examiner erred and thus we affirm the rejection of claims 7, 14, 31, and 38.

V. CONCLUSION AND DECISION

Appellants have not shown that the Examiner erred in concluding that claims 1-14, 22-27, 31-41 are unpatentable under 35 U.S.C. § 103(a). The Examiner's decision rejecting claims 1-14, 22-27, and 31-41 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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